REMARKS

The rejection of Claims 1-19 has been maintained based on Canadian Patent 2,134,130, first published on April 26, 1995. This application was filed on September 11, 1995, however, Applicants' last response included a Declaration of Joseph E. Pascente under 37 CFR § 1.131, showing reduction to practice of the claimed invention prior to April 26, 1995, thereby eliminating the Canadian '130 patent as prior art.

Although the Canadian '130 patent has a German priority date of October 25, 1993, this date means nothing in terms of the effective date of the Canadian patent as prior art. The application was not filed in the U.S. and, therefore, there is no U.S. patent that would have been effective as of its filing date. The availability of the Canadian patent, as prior art to a U.S. patent application, is its first date of publication (April 26, 1995):

§ 102(a) requires publication prior to applicant's invention.

§ 102(b) requires publication more than one year before applicant's filing date.

§ 102(c) requires applicant to abandon the invention.

§ 102(d) requires applicant or his representative to publish the invention in a foreign patent filed

more than one year before applicant's filing date in the U.S.

§ 102(e) requires that the invention be described (published) in a patent by another (e.g., the Canadian '130 patent) before the invention by Applicant. Applicants have shown that their invention was made (reduced to practice) before the Canadian patent was published.

§ 102(f) requires that the invention was not invented by applicant.

§ 102(g) requires that the invention was made in this country by another before applicant's invention.

Clearly, the only part of 35 USC § 102 that applies here is § 102(e), and Applicants have sworn behind the first publication date (April 26, 1995) of the Canadian '130 patent. Applicants' undersigned attorney has searched for any publication of a counterpart of the Canadian '130 patent (see copy of computer search attached as Exhibit A), but no publication date is prior to April 26, 1995.

Accordingly, it is submitted that the rejection based on the Canadian '130 patent should be withdrawn.

Enclosed is a Fourth Supplemental Information Disclosure Statement - two brochures describing firefighting compositions formed by mixing acrylate-acrylamide copolymer

thickening agents in hydrocarbon solvents that create gels when mixed with water. These copolymer compositions are about 40% by weight water-soluble and, therefore, thicken water rather than absorbing at least 20 times their weight in water, as required in all of Applicants' claims (support is found at page 1, line 21). Accordingly, the claims clearly distinguish over the prior art described in the enclosed Fourth Supplemental Information Disclosure Statement.

It is submitted that all claims are now of proper form and scope for allowance. Early and favorable consideration is respectfully requested.

Respectfully submitted,

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EXHIBIT A

SYSTEM:OS - DIALOG OneSearch
File 350:Derwent World Pat. 1963-1980/UD=9704
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*File 350: *** File 350 will be closed after the reload. See new HELP NEWS350 message for information about File 350 Alerts.
File 351:DERWENT WPI 1981-1996/UD=9705;UA=9702;UM=9646
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Set	Items	Description
?ss pn=ca 2134130		
S1	1	PN=CA 2134130

?t 1/39

1/39/1 (Item 1 from file: 351)
DIALOG(R)File 351:DERWENT WPI
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010255313 WPI Acc No: 95-156568/21
XRAM Acc No: C95-072092
XRPX Acc No: N95-123339
Fire extinguishing agent for use as dry powder or additive in water - contains hydrogen-forming polymer powder and a substance with a large surface structure and/or a capillary and/or fibrous structure
Patent Assignee: (OEKO-) OEKO-TEC UMWELTSCHUTZSYSTEME GMBH; (BRUE/) BRUECKNER M
Author (Inventor): BRUCKNER M; BRUECKNER M
Patent Family:

Patent No	Kind	Date	Week	Applic No	Date	LA	Pages	IPC	
EP 649669	A1	950426	9521	EP 94116531	941020	Ger	8	A62D-001/00	(B)
DE 4336319	A1	950427	9522	DE 4336319	931025		6	A62D-001/00	
AU 9477446	A	950511	9527	AU 9477446	941025			A62D-001/00	
CA 2134130	A	950426	9530	CA 2134130	941024			A62D-001/00	
JP 7255870	A	951009	9549	JP 94260764	941025		6	A62D-001/00	

Priority Data (CC No Date): DE 4336319 (931025)
Abstract (Basic): EP 649669 A

A fire extinguishing agent (I) for use as a dry powder or as an additive in water, contains mainly (a) hydrogen-forming polymer powders and (b) substances with a large surface structure and/or a capillary and/or fibrous structure, mixed to give a free-flowing material.

Prodn. of (I) comprises mixing (b) with the mechanically pulverised, dry, free-flowing super-absorber (a), after or during mixing with any other components, or mixing (b) with crushed, water-contg. raw (a) (obtd. by gel polymerisation and not yet dried), then drying, grinding and opt. adding other components, or mixing (b) with the monomer soln. for (a), polymerising the mixt. by gel polymerisation, drying, milling and opt. adding other components.

Pref., (b) is added to the monomer soln. as above.

(I) contains 10-80 wt.% (a) and up to 80 wt.% (b), and pref. also a fireproofing agent or fire retardant in amts. up to 10 wt.%.

(a) are crosslinked, hydrogen-forming polymers obtd. by

polymerisation of acrylamide and/or acrylic acid and/or a salt thereof in the presence of up to 2 wt.% bis-acrylamido-acetic acid, trimethylolpropane triacrylate and/or tetra-allyloxyethane.

(b) consists of kieselguhr, wood flour, paper fibres, fibrous or milled cellulose, fibrous or milled plastic, milled plastic foam and/or amorphous hydrophobic silica.

(I) may also contain up to 30 (pref. up to 10) wt.% polyglycol, up to 30 (pref. up to 10) wt.% organic adhesive, up to 10 (pref. up to 5) wt.% biodegradable organic wetting agent, up to 5 (pref. up to 1) wt.% biodegradable colouring agent, up to 10 (pref. up to 5) wt.% flow accelerator and up to 10 (pref. up to 0.3) wt.% stabiliser.

USE - Used as a dry powder extinguisher for direct application to the seat of a fire and as a swollen, wet extinguisher obtd. by mixing with water to a gel-like consistency, for use in commercial fire extinguishers and fixed units, or as a dry or gelled additive in fire extinguisher tanks for use by fire service techniques (claimed).

ADVANTAGE - Provides a fire extinguishing agent which can be used as a dry powder or as an additive in water, without the disadvantages of prior art systems (e.g. lack of cooling effect in foaming agents, delayed swelling and agglomeration of the super-absorber (a), etc.).

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